

US EPA ARCHIVE DOCUMENT



## Module 6: Liability and Enforcement



# Module Overview

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- ◆ Module Objective: Explain enforcement authorities and liability under CERCLA and discuss the general enforcement process
- ◆ Topics
  - » Overview of the enforcement program
  - » Definition of liability under CERCLA
  - » Enforcement authorities under CERCLA
  - » Basic enforcement process
  - » Identification, notification, and negotiations with PRPs
  - » Settlements and settlement tools
  - » Oversight and cost recovery



# Overview of CERCLA Enforcement

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- ◆ Enforcement is a response action
- ◆ The Enforcement Principle: responsible party pays or performs the cleanup
- ◆ Statute provides authorities and tools



# Liability Under CERCLA

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- ◆ Liability is defined in CERCLA § 107(a)
  - » A person is liable for response costs when:
    - There is a release or a threatened release
    - Of a hazardous substance
    - From a facility into the environment
    - Which causes incurrence of response costs
    - The person is included in at least one class of PRPs

# PRP Liability

- ◆ Strict Liability
  - » Strict = liable without “fault”
- ◆ Joint and several liability
  - » Joint and several = liable for entire cost
- ◆ Civil liability
- ◆ Enforcement discretion
- ◆ Defenses against liability

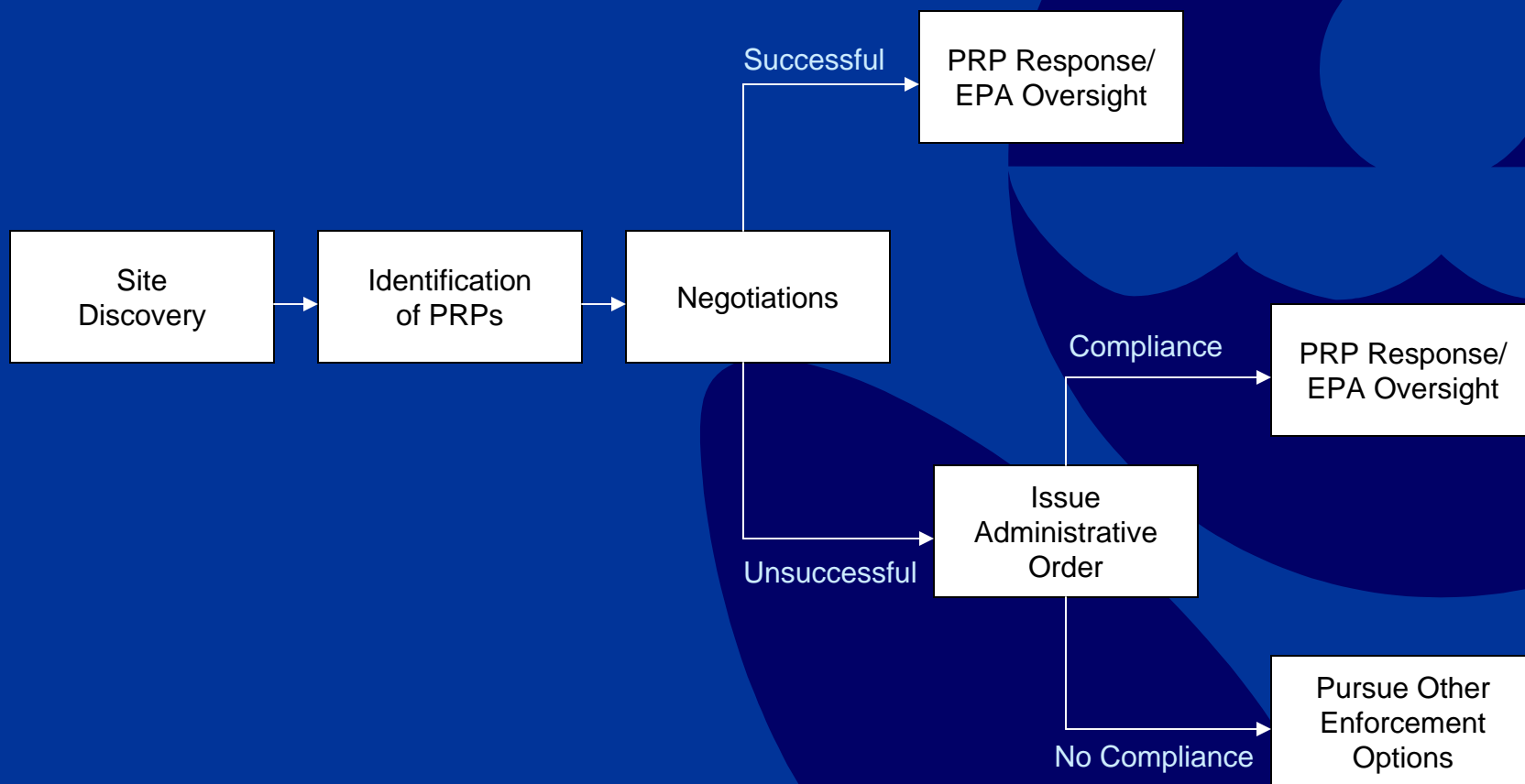


# CERCLA Enforcement Authorities

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- ◆ Section 104(e) - Information requests
- ◆ Section 106 - Unilateral orders
- ◆ Section 107(a) - Recovery of response action costs and damages to natural resources
- ◆ Section 122 - Settlement tools

# CERCLA Enforcement Process





# Identification and Notification of and Negotiations with PRPs

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- ◆ Identification of PRPs (PRP search)
  - » CERCLA § 104(e) letters
- ◆ Notification of PRPs
  - » General notice letter
- ◆ Negotiations with PRPs
  - » Special notice letter



# Settlements and Settlement Tools

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- ◆ Two types of settlement agreements used when negotiations succeed
  - » Administrative
    - Authorized by CERCLA
    - Initiated by EPA
    - Not required to go through court approval
  - » Judicial
    - Filed by DOJ on behalf of EPA in court
- ◆ Settlement documents that finalize settlements
  - » AOCs
  - » CDs

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# Settlements and Settlement Tools

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- ◆ Settlement tools that EPA uses to facilitate PRP settlements
  - » Mixed funding settlements
  - » *De minimis* settlements
  - » NBARs
- ◆ If settlements are not achieved, there are various enforcement options available to EPA:
  - » UAOs
  - » Litigation/judgments

# Oversight

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- ◆ EPA monitors all work at a PRP funded site, including:
  - » On-site examination of the PRPs or their contractors
  - » Review of all reports
  - » Parallel sampling and analysis to ensure accuracy
- ◆ CERCLA § 104 requires PRPs to pay for EPA's RI/FS oversight expenses as a part of the settlement



# Superfund Alternative Sites

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- ◆ Enforcement policy that allows EPA Regions to pursue settlements with PRPs without listing the site on the NPL
- ◆ Site must meet certain criteria to be designated a SA site
- ◆ EPA and state must agree on site and coordinate in the response
- ◆ Response selection and oversight is same as if site were on the NPL
- ◆ Settlements should achieve similar results to sites placed on the NPL



# Cost Recovery

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- ◆ May be used when negotiations with PRPs are unsuccessful
- ◆ EPA issues a demand letter to PRPs
- ◆ PRPs and EPA negotiate to achieve a settlement
- ◆ EPA refers judicial action to DOJ if PRP refuses or negotiations are unsuccessful
- ◆ Cost documentation is critical

# In Review

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- ◆ CERCLA provides criteria under which a party is liable for response costs
- ◆ PRPs are classified into four groups, defined under CERCLA
- ◆ PRPs are identified through a search process
- ◆ There are several types of settlements that EPA can use to negotiate with PRPs, either administratively or judicially
- ◆ If settlements are not achieved, other enforcement options exist including performing the response and seeking recovery of costs from PRPs